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SUBJECT: EL SALVADOR: 2009 SPECIAL 301 INPUT

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[1](#)B. 08 SAN SALVADOR 429

Summary

[1](#)1. Summary. El Salvador continues to comply with CAFTA-DR IPR obligations and improve IPR protection. In 2008 the government approved data exclusivity implementing regulations for pharmaceutical products and ratified two IPR-related treaties. While piracy remains an issue, enforcement actions have also increased significantly in 2008. Post recommends against including El Salvador in the Special 301 report. End Summary.

Legal Framework

[1](#)2. In June 2008, the Government of El Salvador approved regulations for the implementation of data exclusivity for pharmaceutical products. El Salvador ratified the Brussels Convention Relating to the Distribution of Program-Carrying Signals Transmitted by Satellite and has sent the instruments of accession to the World Intellectual Property Organization (WIPO). The Trademark Law Treaty entered into force in El Salvador on November 14, 2008.

Enforcement

[1](#)3. Salvadoran law enforcement actions greatly increased during 2008. Though, optical goods piracy remains a major concern in El Salvador. During 2008 the police seized a total of 938,311 optical media discs and made 159 arrests, up from 279,690 items seized and 126 arrests in 2007. They also dismantled 20 laboratories and seized 1,072 DVD/CD burners. The Attorney General's Office processed a total of 156 cases of optical media piracy.

[1](#)4. El Salvador's software piracy is primarily pre-loaded hard drives. In 2008, the police seized 295 pirated software ?units? and arrested one person. The Attorney General's Office processed 26 cases. According to Microsoft's El Salvador representative, law enforcement actions against software piracy improved in 2008, and software piracy rates showed a slight decrease.

[1](#)5. The police also seized 6,905 clothing pieces and 5,252 shoes in 2008, arresting 59 people for the offenses. The Attorney General's Office processed 27 cases of illegal brand reproduction. The Attorney General's Office also undertook actions against reproduction of books and other copyright infringement. In 2008 they prosecuted five cases of illegal book reproduction and eight cases regarding other copyrights.

[1](#)6. The judiciary continues to be the weak link in criminal IPR enforcement, with lack of knowledge about IPR issues and laws and inconsistent enforcement the main concerns.

Effect on Business

¶17. The local Blockbuster video franchise ended operations in March 2008, citing their inability to compete with pirated products. U.S.-owned Cinemark theaters also blamed piracy for slow sales and closed their theater branch in the city of Santa Ana. In both cases, piracy was not the sole issue; specific business decisions also affected the competitiveness and profitability of the enterprises (reftel B).

Data Exclusivity Implementation

¶18. On July 7, 2008, El Salvador issued regulations for the protection of data exclusivity for pharmaceutical products. The Superior Council for Public Health (CSSP), the responsible office, has struggled with implementation, and in some cases has confused data exclusivity protection with general patent protection. According to local IPR lawyers, the CSSP needs more training to understand data exclusivity and better equipment to process requests.

¶19. According to the Ministry of Economy, data exclusivity regulations for agricultural products are currently with the President's office. The Ministry expects these regulations to be approved in the first half of 2009.

Comment and Recommendation

¶10. El Salvador has continued with legal reforms to comply with CAFTA-DR IPR commitments, including finally issuing data exclusivity regulations for pharmaceutical products. The Government of El Salvador has also increased overall enforcement actions during 2008. Given the continued commitment of the Government of El Salvador to IPR protection, Post recommends against including El Salvador in the 2009 Special 301 Watch List. End comment and recommendation.

Blau